

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Review of Hearing Aid Compatibility Regulations)	WT Docket No. 10-254
)	

COMMENTS

East Kentucky Network, LLC d/b/a Appalachian Wireless (“Appalachian Wireless”) hereby submits Comments in response to the Federal Communications Commission’s Wireless Telecommunications Bureau’s Public Notices in the referenced proceeding.¹ Comment is sought on the operation and effectiveness of the Commission’s rules relating to hearing aid compatibility (“HAC”) of wireless handsets.²

Appalachian Wireless supports the Commission’s efforts to ensure availability to consumers of a full range of hearing aid compatible (“HAC”) handsets. Appalachian Wireless maintains a high quality team of customer service representatives who assist persons with hearing disabilities select and operate handsets appropriate for their needs. Inventory specialists carefully track HAC phones available on the market and ensure company compliance with the rules. At this point, however, FCC HAC rules have become burdensome and distract from productive activity. Cost of compliance outweighs the benefit of FCC HAC regulations.

¹ *Public Notice*, DA 12-1745, released November 1, 2012, and *Public Notice*, DA 13-6, released January 3, 2013 (“Public Notices”). The deadline for submission of these Comments is January 22, 2013, as confirmed by publication of the Public Notices in the Federal Register.

² 47 C.F.R. § 20.19.

The FCC's Wireless Telecommunications Bureau seeks updated comment on the operation and effect on the public and on wireless service providers of regulation of the offering of HAC handsets. As a provider of wireless and broadband service in eastern Kentucky and southwestern Virginia, Appalachian Wireless welcomes this chance to offer its input.

I. HAC handsets are routinely available, although small and regional wireless carriers have little say in the choice of offerings.

For the past few years, nearly every handset Appalachian Wireless has procured and offered for use on its CDMA cellular network has been rated M3/T3 or better. Appalachian Wireless has been able to offer the devices in a range of qualities and features. Even so, Appalachian Wireless is unable to procure the exact handsets it wants for its customers.

Appalachian Wireless participates in a group of about thirty-five small and regional CDMA carriers to procure handsets. Original Equipment Manufacturers – OEMs – *e.g.*, Motorola, LG, and Samsung, present the group with a list of ten to fifteen handsets. The group must choose three on which to combine their buying power to procure from the manufacturer. While national carriers have easy access to mass produced and even custom made handsets, small and regional carriers typically must choose among handset models after the large carriers have made their purchases. Even a large group of small buyers does not have the power to determine specifications for any one handset, and certainly receives no exclusivity.

Small or regional carriers can do absolutely nothing to stop a manufacturer from making only noncompliant handsets. Nor can the carriers demand a minimum supply of HAC handsets from a given manufacturer. Only a limited number of manufacturers are available to small carriers seeking to procure a sufficient number of compliant handset models to satisfy FCC

quotas. Because control over the supply of handsets lies with manufacturers, the FCC should exert its influence primarily over handset manufacturers to advance HAC availability, and least of all over small wireless service providers. Appalachian Wireless does not have the buying power, alone or with a group of similarly situated carriers, to determine or influence the production, features or capabilities of handsets.

II. FCC Form 655 should be eliminated, replaced or simplified.

FCC Form 655 is estimated to take two and a half hours to complete.³ The instructions alone are eleven pages single-spaced, with a twenty-one page appendix. In practice, the filing requires about eight hours. Additionally, an average small or mid-sized carrier spends uncounted hours per year gathering, verifying and organizing information for entry on Form 655. The eight hours spent on the annual filing includes only back and forth communications among persons on the project, data verification, working through the tedious electronic filing format, inquiries to Universal Licensing Service Help staff, final review and submission.

A. FCC Form 655 should be eliminated.

Appalachian Wireless questions the necessity of an annual filing of FCC Form 655. The public can access Appalachian Wireless' website to view all HAC handsets offered by Appalachian Wireless in more pertinent detail than is provided on Form 655. No consumer has ever indicated to Appalachian Wireless that he/she has interest in or has reviewed Appalachian Wireless' Form 655. The only purpose for the Form 655 is seemingly to allow the FCC to verify that Appalachian Wireless complies with the HAC rules. Appalachian Wireless does comply.

³ See, Instructions for Hearing Aid Compatibility Status Reporting Form (FCC Form 655), section VI - FCC Notice Required by the Paperwork Reduction Act of 1995, which states: We have estimated that each response to this collection of information will take, on average, two and a half (2.5) hours. Our estimate includes the time to read the instructions, look through existing records, gather and maintain the required data, enter the data in the Form 655 on-line template, and submit it electronically.

Due to respect for the rules and advances in the marketplace, Appalachian Wireless' compliance is not ensured or enhanced by the required filing of Form 655.

Carriers have been offering compliant handsets for years, and are offering the most advanced handsets manufacturers can produce as quickly as carriers can procure them in the marketplace. Requiring each carrier to report each handset year after year is unnecessary and does not advance the primary goal of making the newest and most sophisticated handsets available to small and regional carriers and their hearing impaired customers.

B. FCC Form 655 could be replaced by a certification of compliance.

Carriers are bound to comply with HAC requirements with or without an annual filing. The filing does not assure compliance as it looks backwards to the prior year. While serving as a reminder to comply, the annual report does not affect compliance in a practical manner. The purpose of the annual HAC report could be fulfilled instead with the filing of a certification of compliance during the prior year. In such a manner, carriers presently confirm compliance with the Commission's rules governing customer proprietary network information ("CPNI").

C. FCC Form 655 could be simplified.

Due to the duplicative and excessively complex nature of the electronic Form 655, the form, if not eliminated, should be simplified in the following respects for service providers:

- Permit a single filing for commonly owned or controlled carriers that offer identical handset inventory throughout the calendar year. Hours and hours are spent on exact replica submissions for affiliated service providers.
- Permit resellers to refer to or import the handset list of the carrier for whom it resells.
- Require the listing of no more handsets than is necessary to demonstrate compliance with the benchmark quotas for the subject calendar year.

- Eliminate the requirement to list non-compliant handsets, unless needed to demonstrate a ratio compliance with the benchmark quota.
- Permit carriers to attach to the form a list of handsets rather than require insertion of detailed information in multi-steps on slow loading pages of the electronic form.
- Provide in alphabetical and numerical order the pre-fill options for handset models. This will serve to lessen work and avoid errors.
- Upon presentation of an error message that a typed-in “other” model name is on the pre-fill list, direct the filer to where the name appears on the list.
- Upon presentation of an error message that the FCC Identifier number does not match the manufacturer’s model, offer a pre-fill for the correct FCC Identifier number.
- Offer a pre-fill for the HAC rating of the handset based upon the make, model and FCC Identifier number. Single entry of the handset’s air interfaces, frequencies and other capabilities and HAC ratings on the form begs for mistakes, initiates inquiry from the Enforcement Bureau, and wastes time, effort, money and anxiety over minor corrections. Eliminate the requirement that each carrier list the handset capabilities (frequencies, air interfaces) of each handset. This information is already reported by the handset makers and is irrelevant to capabilities not offered on the reporting carrier’s network.
- Sync up the Form 655 with the OET’s database. Information from the FCC equipment authorization is already a matter of Commission record.
- Create a common database of handsets’ HAC ratings. Spare each carrier from having to independently navigate the OET website for each handset to discern which of multiple certificates prevails in establishing the HAC rating. Slogging through the

OET website is tiresome, confusing and fraught with chance for error, propelling the carrier into an encounter with the Enforcement Bureau.

- Permit identification of compliant handsets, but do not require reporting of the exact rating of compliant handsets. Requiring carriers to identify a handset as M3 versus M4, or T3 versus T4, is unnecessary for assessment of HAC quota compliance. This irrelevant detail duplicates what the OET has approved, manufacturers have already reported, and carriers have correctly published in stores and on websites.
- Provide a search function for reported handsets to ease corrections to the form.
- Empower the Universal Licensing System to move at reasonable speeds during peak filing times. When working against the HAC deadline in the ULS, it can take thirty seconds to turn a page in the ULS.
- Improve the ULS to accept in textual responses more characters, such as apostrophes, quotes, parentheses and slashes. The Form 655 calls for a HAC page website address, yet will not accept the characters in some addresses.
- Format the printout of the Form 655 to list handsets in some meaningful order. As it is, the printed form is difficult to proofread because the order of handsets is random, bearing no relation to the order in which the devices were entered online, or to their ratings. Proofreading Form 655 against raw data for dozens of handsets is a mind numbing task.
- Permit the carrier to identify the air interface(s) over which it offers service, and clarify that the quotas do not apply to air interfaces over which the reporting carrier does not provide service. Small carriers face inquiry from the Enforcement Bureau for reporting inadequate numbers of compliant handsets capable of operating on air

interfaces not provided by the carriers, expending weeks of costly investigation until the matter proves inconsequential.

- Open the Form 655 filing window earlier than December 15th and extend it past January 15th. Thirty days is too short a time to gather and vet information then enter it meticulously onto Form 655. Ninety days would be sufficient, but truly, Form 655 should be accessible online all year so the information can be entered monthly if the carrier so desires. Condensing the filing requirement into a single window over the holidays is unnecessary and impractical. It is the busiest season in retail stores, where inventory managers have their hands full working with personnel and customers.
- Refrain from yearly adding multiple, convoluted questions to Form 655 to reflect every nuance of HAC technology development and disclosure requirements. Such questions by nature are confusing because the related regulations are complex. A simple check off would permit the carrier to certify its knowledge of and compliance with the all FCC HAC rules.

These changes will help relieve the burden on FCC Form 655 filers.

III. HAC forfeitures are onerous and out of proportion with harm caused.

Sums paid by carriers under forfeitures and Consent Decrees resulting from failure to carry a sufficient number of HAC handsets have grown beyond a reasonable penalty in balance with the transgression. From 2008 to the first half of 2011, the base forfeiture ran about \$15,000 per handset under the number required to be offered. The figure jumped to about \$20,000, then \$25,000. In early 2012 the base amount became \$15,000 per handset for each month not offered. Since then, forfeiture amounts have ranged from \$55,000 to \$515,000, but the specifics of the

handset shortfalls are no longer disclosed in the FCC's decisions. Presently, the base forfeiture appears to be at least \$15,000 per handset per month of shortfall. This amount is wholly unrelated to any harm caused by lack of a single compliant handset among many for a short time. Collected monies go to the U.S. Treasury, not to the hearing impaired community. Overzealous enforcement renders the Form 655 a mine field spiked with excessive punishment for violation, not an instrument of disclosure or assistance to consumers.

Conclusion

The Commission is on the proper course to consider the usefulness and efficiency of the annual hearing aid compatibility report. Certification of a carrier's compliance with HAC regulations would free up valuable time and money for productive use in commerce while promoting the availability of compatible devices to the hearing impaired community.

Respectfully submitted,

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